

Title 70
TRANSPORTATION
Part XXIII. Purchasing

Chapter 3. Purchasing Rules and Regulations

§301. Types of Commodities

A. Commodities purchased by the DOTD procurement section fall into two categories, either exempt commodities or non-exempt commodities.

1. Exempt Commodities. Exempt commodities are defined in R.S. 39:1572 as materials and supplies that will become component parts of any road, highway, bridge or appurtenance thereto. These commodities are exempt from central purchasing and regulations of the commissioner of administration, but nevertheless shall be subject to the requirements of the Louisiana Procurement Code and such regulations as may be promulgated by the secretary of the Department of Transportation and Development.

2. Non-Exempt Commodities. Non-exempt commodities are defined as materials and supplies that will not become component parts of any road, highway, bridge or appurtenance thereto. These commodities are subject to the requirements of the Louisiana Procurement Code and such regulations as may be promulgated by the commissioner of administration and shall be governed by the rules and regulations adopted by the director of state purchasing.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1551-1736 and 48:204-210.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Office of Purchasing, LR 8:148 (March 1982), amended LR 29:607 (April 2003).

§303. Delegation of Purchasing Authority Set by the Director of State Purchasing

A. R.S. 39:1566 authorizes the director of state purchasing to delegate authority to any governmental body as deemed appropriate within the limitations of state law and the state procurement regulations. The director of state purchasing has set the delegated purchasing authority covering non-exempt commodities for the Department of Transportation and Development. The director of state purchasing has the authority to change or rescind the purchasing authority of the Department of Transportation and Development at any time.

B. In accordance with R.S. 39:1566 and the latest revision to the governor's executive order covering small purchases, the director of state purchasing has also set the delegated purchasing authority covering equipment repairs and/or parts to repair equipment. The director of state purchasing has the authority to change or rescind the purchasing authority of the Department of Transportation

and Development which covers equipment repairs and parts to repair equipment at any time.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1551-1736 and 48:204-210.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Office of Purchasing, LR 8:148 (March 1982), amended LR 29:607 (April 2003).

§305. Delegation of Purchasing Authority Set by the DOTD Procurement Director

A. R.S. 39:1572 authorizes the Secretary of the Department of Transportation and Development to promulgate rules and regulations regarding the purchase of materials and supplies that will become a component part of any road, highway, bridge, or appurtenance thereto. The secretary has authorized the DOTD procurement director to set the delegated purchasing authority covering exempt commodities for each district and section within the Department of Transportation and Development. The DOTD procurement director has the authority to change or rescind the purchasing authority of any district or section at any time.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1551-1736 and 48:204-210.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Office of Purchasing, LR 8:148 (March 1982), amended LR 29:607 (April 2003).

§307. Non-Competitive Procurement

A. Purchases of less than \$500 (or the amount set in the latest governor's executive order, whichever is higher) do not require competitive bids.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1551-1736 and 48:204-210.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Office of Purchasing, LR 8:148 (March 1982), amended LR 29:608 (April 2003).

§309. Requests for Quotations Covering Non-Exempt Commodities

A. Purchases of non-exempt commodities having an estimated cost which exceeds the non-competitive dollar limit but which do not exceed the delegated purchasing authority of the department are referred to as "requests for quotations."

B. All requests for quotations covering non-exempt commodities which exceed the non-competitive dollar limit but do not exceed \$2,000 (or the dollar limits listed in the latest governor's executive order, whichever is higher) shall be awarded on the basis of the lowest responsive price quotation solicited by telephone, facsimile or other means to at least three bona fide, qualified bidders. Whenever

possible, at least one of the bona fide, qualified bidders shall be a certified economically disadvantaged business. All facsimile or written solicitations shall include the bid closing date, time, and all pertinent specifications, including quantities, units of measure, packaging, delivery requirements, terms and conditions, and basis of award.

C. All requests for quotations covering non-exempt commodities having an estimated cost which exceeds \$2,000 but which do not exceed \$10,000, (or the dollar limits listed in the latest governor's executive order, whichever is higher) shall be awarded on the basis of the lowest responsive price quotation solicited by facsimile or written solicitation to at least five bona fide, qualified bidders. Whenever possible, at least two of the bona fide, qualified bidders shall be certified economically disadvantaged businesses. Facsimile quotations shall allow for bids to be accepted for a minimum period of five calendar days. Written solicitations shall allow for bids to be accepted for a minimum period of 10 calendar days. All facsimile or written solicitations shall include the bid closing date, time, and all pertinent specifications, including quantities, units of measure, packaging, delivery requirements, terms and conditions and basis of award.

D. All requests for quotations shall be publicly opened and read whenever interested parties are present at the bid opening.

E. Purchases of non-exempt commodities having an estimated cost which exceeds \$10,000 (or the latest delegated purchasing authority, whichever is higher) are prepared and forwarded to the Office of State Purchasing for bid solicitation.

F. Requests for quotations for non-exempt commodities may also be referred to as "invitations for bids" throughout this rule.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1551-1736 and 48:204-210.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Office of Purchasing, LR 8:148 (March 1982), amended LR 29:608 (April 2003).

§311. Requests for Quotations Covering Exempt Commodities

A. Purchases of exempt commodities having an estimated cost which exceeds the non-competitive dollar limit but which do not exceed \$25,000 (or the latest revision to R.S. 48:205, whichever is higher) are also referred to as "requests for quotations."

B. All requests for quotations covering exempt commodities which exceed the non-competitive dollar limit but which do not exceed \$2,000 (or the dollar limits listed in the latest governor's executive order, whichever is higher) shall be awarded on the basis of the lowest responsive price quotation solicited by telephone, facsimile or other means to at least three bona fide, qualified bidders. Whenever possible, at least one of the bona fide, qualified bidders shall be a certified economically disadvantaged business. All facsimile or written solicitations shall include the bid closing date, time, and all pertinent specifications, including

quantities, units of measure, packaging, delivery requirements, terms and conditions, and basis of award.

C. All requests for quotations covering exempt commodities having an estimated cost which exceeds \$2,000 (or the dollar limit listed in the latest governor's executive order, whichever is higher) but which do not exceed \$25,000 (or the latest revision to R.S. 48:205, whichever is higher) shall be awarded on the basis of the lowest responsive price quotation solicited by facsimile or written solicitation to at least five bona fide, qualified bidders. Whenever possible, at least two of the bona fide, qualified bidders shall be certified economically disadvantaged businesses. Facsimile quotations shall allow for bids to be accepted for a minimum period of five calendar days. Written solicitations shall allow for bids to be accepted for a minimum period of 10 calendar days. All facsimile or written solicitations shall include the bid closing date, time, and all pertinent competitive specifications, including quantities, units of measure, packaging, delivery requirements, terms and conditions, and basis of award.

D. All requests for quotations shall be publicly opened and read whenever interested parties are present at the bid opening.

E. Purchase of exempt commodities having an estimated cost which exceeds \$25,000 (or the latest revision to R.S. 48:205, whichever is higher) will be processed as sealed bids and shall be advertised in accordance with R.S. 48:205.

F. Request for quotations for exempt commodities may also be referred to as "invitation for bids" throughout this rule.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1551-1736 and 48:204-210.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Office of Purchasing, LR 8:148 (March 1982), amended LR 29:608 (April 2003).

§313. Request for Sealed Bids Covering Exempt Commodities

A. Purchases of exempt commodities having an estimated cost which exceeds \$25,000 (or the latest revision to R.S. 48:205, whichever is higher) are referred to as sealed bids.

B. All sealed bids shall be advertised in the Official Journal of the State. Advertisements shall be published not less than 10 days prior to the date set for opening the bids. In the event the purchase pertains to a particular parish, the advertisement shall also be published in a newspaper of general circulation printed in the parish. The published advertisement shall fix the exact place and time for presenting and opening of bids.

C. For bids over \$25,000 (or the latest revision to R.S. 48:205, whichever is higher), a minimum of 21 days should be provided unless the DOTD procurement director or designee deems that a shorter time is necessary for a particular procurement. However, in no case shall the bidding time be less than 10 days unless the DOTD

procurement director has declared the purchase to be an emergency.

D. Sealed bids shall be awarded on the basis of the lowest responsive price quotation solicited by written solicitation to at least five bona fide, qualified bidders. Whenever possible, at least two of the bona fide, qualified bidders shall be a certified economically disadvantaged business. All written solicitations shall include the bid closing date, time, and all pertinent specifications, including quantities, units of measure, packaging, delivery requirements, terms and conditions, and basis of award.

E. The practice of dividing proposed or needed purchases into separate installments for the purpose of evading the bid advertisement requirement is expressly prohibited.

F. Sealed bids shall be publicly opened on the bid opening day.

G. Bids will be publicly read whenever interested parties are present.

H. Sealed bids may also be referred to as invitation for bids throughout this rule.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1551-1736 and 48:204-210.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Office of Purchasing, LR 8:148 (March 1982), amended LR 29:609 (April 2003).

§315. Single Purchase or One-Time Purchase

A. A single purchase or a one-time purchase refers to a purchase for a specific quantity to be delivered in one shipment.

B. A single purchase or a one-time purchase may also be referred to as invitation for bids throughout this rule.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1551-1736 and 48:204-210.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Office of Purchasing, LR 8:148 (March 1982), amended LR 29:609 (April 2003).

§317. Term Contract

A. A term contract (also referred to as an indefinite quantity purchase) is a purchase by which a source of supply is established for a specific period of time. Term contracts are usually based on indefinite quantities to be ordered as needed, and no quantities are guaranteed. This type of contract can also be used to specify definite quantities with deliveries extended over the contract period.

B. Term contracts may contain an option for renewal or extension of the contract; however, this provision must be included in the bid solicitation. When such a contract is awarded by competitive sealed bidding, exercise of the option shall be at the discretion of the department only and shall be with the mutual agreement of the contractor.

C. A term contract or indefinite quantity purchase may also be referred to as invitation for bids throughout this rule.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1551-1736 and 48:204-210.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Office of Purchasing, LR 8:148 (March 1982), amended LR 29:609 (April 2003).

§319. Proprietary Purchase

A. A proprietary purchase is defined as a purchase that cites brand name, model number, or some other designation that identifies a specific product to be offered exclusive of others.

B. Because use of a proprietary specification is restrictive, it may be used only when written documents verify and substantiate that only the identified brand name item or items will satisfy the needs of the department.

C. In order to declare a purchase a proprietary procurement, a "Justification For Sole Source or Proprietary Purchase" document must be submitted to the DOTD procurement director.

D. The use of a proprietary specification covering a non-exempt commodity requires approval of the DOTD procurement director and also requires the approval of the director of state purchasing if the purchase exceeds the delegated purchasing authority of the Department of Transportation and Development.

E. The use of a proprietary specification covering an exempt commodity requires approval of the DOTD procurement director.

F. The DOTD procurement section shall seek to identify sources from which the designated brand name item can be obtained and shall solicit such sources to achieve whatever degree of competition is practicable. If only one source can supply the requirement, the procurement shall be made as a sole source procurement.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1551-1736 and 48:204-210.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Office of Purchasing, LR 8:148 (March 1982), amended LR 29:609 (April 2003).

§321. Sole Source Procurement

A. A sole source procurement is the purchase of a required supply, service, or major repair without competition.

B. A sole source procurement is permissible only if the required supply, service, or major repair is available from only a single supplier.

C. A requirement for a particular proprietary item does not justify a sole source procurement if there is more than one potential bidder, supplier or distributor for that item.

D. Examples of circumstances which could necessitate a sole source procurement:

1. compatibility of equipment, accessories, or replacement parts is the paramount consideration;
2. sole supplier's item is needed for trial use or testing.

E. In cases of reasonable doubt, competitive bids will be solicited.

F. Because use of a sole source procurement is restrictive, it may be used only when written documents verify and substantiate that only the identified brand name item or items will satisfy the needs of the department, and that there is only one single source.

G. In order to declare a purchase a sole source procurement, a "Justification For Sole Source or Proprietary Purchase" document must be submitted to the DOTD procurement director.

H. The request for a sole source procurement covering a non-exempt commodity requires approval of the DOTD procurement director and also requires the approval of the director of state purchasing if the purchase exceeds the delegated purchasing authority of the Department of Transportation and Development.

I. The request for a sole source procurement covering an exempt commodity requires approval of the DOTD procurement director.

J. The DOTD procurement director shall submit reports of all sole source purchases to the Office of State Purchasing upon their request. This report shall cover the preceding fiscal year and shall list the following:

1. contractor's name;
2. amount and type of contract;
3. list of the supplies, services or major repairs procured under the contract; and
4. contract number.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1551-1736 and 48:204-210.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Office of Purchasing, LR 8:148 (March 1982), amended LR 29:609 (April 2003).

§323. Emergency Purchase of Exempt Commodities

A. In order for the purchase of an exempt commodity to be declared an emergency purchase without solicitation of bids, the emergency must conform to the definition set forth in R.S. 48:207.

B. Purchases which conform to this definition are made in accordance with the Department's Policy and Procedure Memorandum No. 38 which states the internal procedures which must be followed before proceeding with an emergency purchase.

C. Prior to all emergency procurements of exempt commodities, the DOTD procurement director or designee shall approve the procurement if the emergency occurs during normal working hours. Facsimile requests for emergency procurement should be submitted to the DOTD procurement director if time permits, and must contain adequate justification for the emergency.

D. The procurement method used shall be selected so that required supplies, services, or major repair items are

procured in time to meet the emergency. Given this constraint, such competition as is practicable should be obtained.

E. Any bid accepted shall be confirmed in writing.

F. The DOTD procurement director shall submit reports of all emergency purchases to the Office of State Purchasing upon request.

G. This report shall cover the preceding fiscal year and shall list the following:

1. contractor's name;
2. amount and type of contract;
3. the supplies services or major repairs procured under the contract;
4. the contract number.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1551-1736 and 48:204-210.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Office of Purchasing, LR 8:148 (March 1982), amended LR 29:610 (April 2003).

§325. Emergency Procurement of Non-Exempt Commodities

A. The provisions of this Section apply to every non-exempt procurement made under emergency conditions that will not permit other source selection methods to be used.

B. Emergency procurement shall be limited to only those supplies, services, or major repair items necessary to meet the emergency.

C. The Department of Transportation and Development is authorized to make emergency procurement of non-exempt commodities of up to \$10,000 (or the delegated purchasing authority, whichever is higher) when an emergency condition arises and the need cannot be met through normal procurement methods.

D. Prior to all such emergency procurement of non-exempt commodities above the delegated purchasing authority, both the DOTD procurement director and the director of state purchasing shall approve the procurement. Facsimile requests for emergency procurement should be submitted to the DOTD procurement director if time permits, and must contain adequate justification for the emergency.

E. The source selection method used shall be selected to insure that the required supplies, services, or major repair items are procured in time to meet the emergency. Given this constraint, such competition as is practicable should be obtained.

F. Any bid accepted shall be confirmed in writing.

G. If emergency conditions exist as a result of an unsuccessful attempt to use competitive sealed bidding, an emergency procurement may be made.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1551-1736 and 48:204-210.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Office of Purchasing, LR 8:148 (March 1982), amended LR 29:610 (April 2003).

§327. Goods Manufactured or Services Performed by Sheltered Workshops

A. R.S. 39:1595.4 provides in part that a preference shall be given by all governmental bodies in purchasing products and services from state operated or state supported sheltered workshops for persons with severe disabilities.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1551-1736 and 48:204-210

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Office of Purchasing, LR 29:610 (April 2003).

§329. Purchase of Used or Demonstrator Equipment

A. R.S. 39:1645 authorizes the procurement of any equipment which is used or which has been previously purchased by an individual or corporation.

B. The DOTD procurement director must first determine that the procurement of said equipment is cost effective to the state.

C. After receiving the approval of the DOTD procurement director to proceed, the section or district will obtain a letter from the secretary of the Department of Transportation and Development certifying in writing to the director of state purchasing the following:

1. the price for which the used equipment may be obtained;
2. the plan for maintenance and repair of the equipment;
3. the cost of the equipment;
4. the savings that will accrue to the state because of the purchase of the used equipment;
5. the fact that following the procedures set out in the Louisiana Procurement Code will result in the loss of the opportunity to purchase the equipment.

D. If approved, the used equipment shall be purchased within the price range set by the director of state purchasing.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1551-1736 and 48:204-210.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Office of Purchasing, LR 8:148 (March 1982), amended LR 29:611 (April 2003).

§331. Exclusive Statewide Contracts

A. If the Office of State Purchasing has entered into an exclusive statewide competitive contract for non-exempt commodities or services, the Department of Transportation and Development shall use such statewide competitive contracts when procuring such supplies or services unless given written exemption by the director of state purchasing.

B. A lower local price is not justification for exception.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1551-1736 and 48:204-210.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Office of Purchasing, LR 8:148 (March 1982), amended LR 29:611 (April 2003).

§333. Non-Exclusive Statewide Contracts

A. If the Office of State Purchasing has entered into a non-exclusive contract for non-exempt commodities or services, the Department of Transportation and Development has the option of either using the contract or seeking competitive bids.

B. Non-exclusive contracts may be by-passed if the district or section can obtain the item at a better price or if the delivery time is more acceptable. Approval to by-pass a non-exclusive contract is not required.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1551-1736 and 48:204-210.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Office of Purchasing, LR 8:148 (March 1982), amended LR 29:611 (April 2003).

§335. Brand Name Contracts

A. Brand name contracts are non-exclusive contracts entered into by the Office of State Purchasing. Because these contracts are not competitively bid, they are usually not considered cost effective.

B. The department also discourages the use of brand name products which come in concentrated form.

C. The only exception to the use of brand name contracts is computers and computer equipment which have been mandated by the DOTD Information Technology Director for approved usage. Purchases must be made against brand name contracts for this equipment if the item appears on the information technology approved list.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1551-1736 and 48:204-210.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Office of Purchasing, LR 8:148 (March 1982), amended LR 29:611 (April 2003).

§337. DOTD Contracts

A. DOTD contracts for exempt commodities are exclusive contracts entered into by the DOTD procurement section. Approval to by-pass a DOTD contract requires written approval from the DOTD procurement director and will only be approved in cases of emergency.

B. DOTD contracts may also be referred to as invitation for bids throughout this rule.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1551-1736 and 48:204-210.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Office of Purchasing, LR 8:148 (March 1982), amended LR 29:611 (April 2003).

§339. Cost-Plus-a-Percentage-of-Cost Contracts

A. The cost-plus-a-percentage-of-cost system of contracting shall not be used.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1551-1736 and 48:204-210.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Office of Purchasing, LR 8:148 (March 1982), amended LR 29:611 (April 2003).

§341. Vendor Commodity Lists

A. Vendor commodity lists are maintained to provide the department with the names and addresses of businesses that may be interested in competing for various types of state contracts. Unless otherwise provided, inclusion or exclusion of the name of a business does not indicate whether the business is responsible with respect to a particular procurement or otherwise capable of successfully performing the contract.

B. It shall be the responsibility of the bidder to confirm that his company is in the appropriate bid category.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1551-1736 and 48:204-210.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Office of Purchasing, LR 8:148 (March 1982), amended LR 29:611 (April 2003).

§343. Qualified Products List

A. Qualified products lists have been developed by evaluating brands and models of various manufacturers of an item and listing those determined to be acceptable products. These qualified products lists have been developed by the DOTD Materials and Testing Laboratory when testing or examination of the supplies or major repair items prior to issuance of the solicitation is desirable or necessary in order to best satisfy the needs of the department.

B. When developing a qualified products list, the DOTD Materials and Testing Laboratory shall contact a representative group of potential suppliers soliciting products for testing and examination to determine acceptability for inclusion on a qualified products list. Any potential supplier, even though not solicited, may offer products for consideration.

C. Inclusion on a qualified products list shall be based on results of tests or examinations conducted by the DOTD Materials and Testing Laboratory.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1551-1736 and 48:204-210.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Office of Purchasing, LR 8:148 (March 1982), amended LR 29:611 (April 2003).

§345. Availability of Funds

A. The continuation of a term contract which extends beyond the fiscal year is contingent upon the appropriation of funds to fulfill the requirements of the contract by the legislature. If the legislature fails to appropriate sufficient monies to provide for the continuation of a contract, or if such appropriation is reduced by the veto of the governor or by any means provided in the Appropriations Act or Title 39 of the Louisiana Revised Statutes of 1950 to prevent the total appropriation for the year from exceeding revenues for that year, or for any other lawful purpose and the effect of

such reduction is to provide insufficient monies for the continuation of the contract, the contract shall terminate on the date of the beginning of the first fiscal year for which funds are not appropriated.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1551-1736 and 48:204-210.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Office of Purchasing, LR 8:148 (March 1982), amended LR 29:612 (April 2003).

§347. Bid Documents

A. All invitations for bids issued by the Department of Transportation and Development shall be solicited on the department's bid form and shall contain all pertinent information and shall be full and complete including, but not limited to, the following:

1. purchase description;
2. specifications;
3. special instructions and conditions;
4. instructions for submitting bids;
5. terms and conditions;
6. delivery requirements;
7. packaging;
8. bid evaluation and award criteria.

B. The bid solicitation may incorporate documents by reference, provided that the bid solicitation specifies where such documents can be obtained.

C. If any special conditions are to apply to a particular contract, they shall be included in the bid solicitation.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1551-1736 and 48:204-210.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Office of Purchasing, LR 8:148 (March 1982), amended LR 29:612 (April 2003).

§349. Specifications

A. A specification is defined as any description of the physical, functional, or performance characteristics of a supply, service, or major repair item.

B. The specification includes, as appropriate, requirements for inspecting, testing, or preparing a supply, service, or item for delivery.

C. Unless the context requires otherwise, the terms "specification" and "purchase description" are used interchangeably throughout this rule.

D. The purpose of a specification is to serve as a basis for obtaining a supply, service, or major repair item adequate and suitable for the needs of the department in a cost effective manner, taking into account, to the extent practicable, the costs of ownership and operation as well as initial acquisition costs.

E. It is the policy of the Department of Transportation and Development that specifications permit maximum

practicable competition consistent with this purpose. Specifications shall be drafted with the objective of clearly describing the requirements of the department.

F. All specifications shall be written in such a manner as to describe the requirements to be met, without having the effect of exclusively requiring a proprietary supply, service, or major repair item, or procurement from a sole source, unless no other manner of description will suffice. In that event, a written determination shall be made that it is not practicable to use a less restrictive specification.

G. It is the general policy of the Department of Transportation and Development to procure standard commercial products whenever practicable. In developing specifications, accepted commercial standards shall be used and unique requirements shall be avoided to the extent practicable.

H. Bid specifications may contemplate a fixed escalation or de-escalation in accordance with a recognized escalation index.

I. Specifications and any written determination or other document generated or used in the development of a specification shall be available for public inspection.

J. This Section applies to all persons who may prepare a specification for use by the Department of Transportation and Development, including consultants, architects, engineers, designers, and other draftsmen of specifications used for public contracts.

K. To the extent feasible, a specification may provide alternate descriptions of supplies, services, or major repair items where two or more design, functional, or performance criteria will satisfactorily meet the requirements of the Department of Transportation and Development.

L. Whenever a manufacturer's name, trade name, brand name, catalog number or approved equivalent is used in a solicitation, the use is for the purpose of describing the standard of quality, performance, and characteristics desired and is not intended to limit or restrict competition.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1551-1736 and 48:204-210.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Office of Purchasing, LR 8:148 (March 1982), amended LR 29:612 (April 2003).

§351. Bid Samples and/or Descriptive Literature

A. Descriptive literature means information available in the ordinary course of business which shows the characteristics, construction, packaging or operation of an item which enables the department to consider whether the item meets its specifications and needs.

B. Bid sample means a sample to be furnished by a bidder to show the characteristics of the item offered in the bid.

C. Bid samples or descriptive literature may be required when it is necessary to evaluate required characteristics of the items bid.

D. If the invitation for bids states that either a sample or descriptive literature must be submitted with bid, the bid will be rejected if bidder fails to comply.

E. When the invitation for bids states that bidders may be required to submit a sample prior to award, the sample must be received by the deadline set at time of request. Failure to submit samples within the time allowed will result in disqualification or non-consideration of bid.

F. Requirements for Samples

1. When required, samples must be submitted free of expense to the department.

2. Samples shall be marked plainly with name and address of bidder and the purchase requisition number.

3. The bidder must state if he desires that the sample be returned after evaluation, provided that the sample has not been used or made useless through testing procedures. When requested, samples will be returned at bidder's risk and expense. Unsolicited bid samples will not be evaluated and will not be returned to the bidder.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1551-1736 and 48:204-210.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Office of Purchasing, LR 8:148 (March 1982), amended LR 29:613 (April 2003).

§353. New Products

A. Unless specifically called for in the invitation for bids, all products for purchase must be new, never previously used, and the current model and/or packaging. No remanufactured, demonstrator, used or irregular product will be considered for purchase unless otherwise specified in the invitation for bids.

B. The manufacturer's standard warranty will apply.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1551-1736 and 48:204-210.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Office of Purchasing, LR 29:613 (April 2003).

§355. Brand Names

A. Unless otherwise specified in the invitation for bids, any manufacturer's name, trade name, brand name, or catalog number used in the solicitation is for the purpose of describing the standard of quality, performance and characteristics desired and is not intended to limit or restrict competition.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1551-1736 and 48:204-210.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Office of Purchasing, LR 8:148 (March 1982), amended LR 29:613 (April 2003).

§357. Product Acceptability

A. The invitation for bids shall set forth the evaluation criteria to be used in determining product acceptability. The invitation for bids may require the submission of bid samples, descriptive literature, technical data, or other

material. It may also provide for inspection or testing of a product prior to award for such characteristics as quality or workmanship.

B. Examination of the product to determine whether the product conforms with purchase description requirements, such as unit of measure or packaging, shall be performed. If a bidder changes the unit or packaging, the bid for the changed item shall be rejected.

C. The acceptability evaluation is not conducted for the purpose of determining whether one bidder's item is superior to another but only to determine that a bidder's offering is acceptable as set forth in the invitation for bids. Any bidder's offering which does not meet the acceptability requirements shall be rejected.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1551-1736 and 48:204-210.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Office of Purchasing, LR 8:148 (March 1982), amended LR 29:613 (April 2003).

§359. Estimated Quantities

A. Term contracts and/or indefinite quantity contracts contain no specific quantities given or guaranteed. Only such quantities as required by the department during the contract period will be ordered.

B. Estimated quantities are based on the previous contract usage or estimates. Where usage is not available, a quantity of one indicates a lack of history on the item.

C. The contractor must supply actual quantities ordered, whether the total of such quantities are more or less than the estimated quantities shown on the bid schedule.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1551-1736 and 48:204-210.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Office of Purchasing, LR 8:148 (March 1982), amended LR 29:613 (April 2003).

§361. Guarantee and Liability

A. The Department of Transportation and Development requires that all contractors submit to the following guarantees.

1. Guarantee that the supplies delivered are free from defects in design and construction.

2. Guarantee that the supplies are the manufacturer's standard design in construction and that no changes or substitutions have been made in the items listed in the contract.

3. Guarantee that the contractor holds and saves the Department of Transportation and Development, its officers, agents and employees harmless from liability of any kind, including cost and expenses on account of any patented or non-patented invention, articles, devices or appliances manufactured or used in the performance of any DOTD contract, including use by the government.

4. Guarantee to replace free of charge all defective equipment, materials or supplies delivered under the

contract. All transportation charges covering return and replacement shall be paid by the contractor.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1551-1736 and 48:204-210.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Office of Purchasing, LR 8:148 (March 1982), amended LR 29:613 (April 2003).

§363. Pre-Bid Conferences Covering Exempt Commodities

A. Pre-bid conferences may be conducted to explain the procurement requirements. They shall be announced to all prospective bidders known to have received an invitation for bids and shall be advertised in the Official Journal of the State if the estimated cost is over \$25,000 (or the latest revision to R.S.48:205, whichever is higher).

B. The conference will be held after an interval following the issuance of invitation for bids in order to allow bidders to become familiar with the invitation, but sufficiently before bid opening to allow consideration of the conference results in preparing their bids.

C. Nothing stated at the pre-bid conference shall change the invitation for bids unless an addendum is issued.

D. If the pre-bid conference requires mandatory attendance, bidders not attending the conference will not be considered for award.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1551-1736 and 48:204-210.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Office of Purchasing, LR 8:148 (March 1982), amended LR 29:614 (April 2003).

§365. Modifying Written Bid Solicitations

A. Addenda modifying written bid solicitations covering purchases above the non-competitive bid level shall not be issued within three working days prior to the scheduled bid opening date for the opening of bids, excluding Saturdays, Sundays and any other legal holidays.

B. If the necessity arises to issue an addendum modifying an invitation for bids within the three working day period prior to the bid opening date, then the opening of bids shall be extended exactly one week, without the requirement of re-advertising.

C. An addendum shall be sent to all prospective bidders known to have received an invitation for bids.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1551-1736 and 48:204-210.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Office of Purchasing, LR 8:148 (March 1982), amended LR 29:614 (April 2003).

§367. Cancellation of Invitation for Bids

A. A solicitation may be canceled in whole or in part when the DOTD procurement director determines, in writing, that such action is in the best interest of the department, for reasons including, but not limited to the following:

1. the department no longer requires the supplies, services, or major repairs;
2. proposed amendments to the solicitation would be of such magnitude that a new solicitation is desirable;
3. ambiguous or otherwise inadequate specifications were part of the solicitation;
4. the solicitation did not provide for consideration of all factors of significant cost to the state;
5. prices exceed available funds and it would not be appropriate to adjust quantities to come within available funds;
6. all otherwise acceptable bids received are at unreasonable prices;
7. there is reason to believe that the bids or proposals may not have been independently calculated in open competition, may have been collusive, or may have been submitted in bad faith.

B. When a solicitation is canceled prior to the bid opening, a notice of cancellation shall be sent to all businesses solicited. The notice of cancellation shall:

1. identify the solicitation;
2. briefly explain the reason for cancellation;
3. where appropriate, explain that an opportunity will be given to compete on any resolicitation or any future procurement of similar supplies, services, or major repairs.

C. The reasons for cancellation shall be made a part of the procurement file and shall be made available for public inspection.

D. If the solicitation is canceled prior to the bid opening, all bids will be returned to the bidders.

E. If the solicitation is canceled after the bid opening, all bids will be retained by the DOTD procurement section.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1551-1736 and 48:204-210.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Office of Purchasing, LR 8:148 (March 1982), amended LR 29:614 (April 2003).

§369. Modification or Withdrawal of Bids

A. Bids covering requests for quotations may be modified or withdrawn by written, telegraphic or fax notice received at the address designated in the invitation for bids prior to the time set for bid opening, as recorded by date stamp at the DOTD procurement section.

B. Bids covering sealed bids may only be modified if the modification is received in writing prior to the time set for bid opening, as recorded by date stamp at the DOTD procurement section. Telegraphic or fax modifications will not be accepted on a sealed bid.

C. A written request for the withdrawal of a bid or any part thereof will be granted if the request is received prior to the specified time of bid opening. If a bidder withdraws a

bid prior to the bid opening, the bid document will be returned to the bidder.

D. All documents relating to the modification or withdrawal of bids shall be made a part of the appropriate procurement file.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1551-1736 and 48:204-210.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Office of Purchasing, LR 29:614 (April 2003).

§371. Postponed Bid Openings

A. In the event that bids are scheduled to be opened on a day that is a federal holiday, or if the governor, by proclamation, creates an unscheduled holiday, or for any cause that creates a non-working day, bids scheduled to be opened on that day shall be opened on the next working day at the same address and time specified in the invitation for bids.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1551-1736 and 48:204-210.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Office of Purchasing, LR 8:148 (March 1982), amended LR 29:614 (April 2003).

§373. Receipt, Opening and Recording of Bids

A. Upon receipt, all bids and modified bids will be time-stamped, but not opened. They shall be stored in a secure place until time for bid opening.

B. Bids and modified bids shall be publicly opened and publicly read at the time and place designated in the invitation for bids if prospective bidders attend the bid opening.

C. The names of the bidders and the bid price shall be read aloud or otherwise be made available and shall be recorded.

D. Bidders may attend the bid opening but no information or opinion concerning the ultimate award will be given at the bid opening or during the evaluation process.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1551-1736 and 48:204-210.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Office of Purchasing, LR 8:148 (March 1982), amended LR 29:615 (April 2003).

§375. Late Bids

A. Formal bids and addenda thereto, received at the address designated in the invitation for bids after the time specified for bid opening will not be considered, whether delayed in the mail or for any other causes whatsoever. In no case will late bids be accepted.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1551-1736 and 48:204-210.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Office of Purchasing, LR 8:148 (March 1982), amended LR 29:615 (April 2003).

§377. Bid Results

A. Information pertaining to results of bids may be secured by visiting the Department of Transportation and Development during normal working hours, except weekends and holidays.

B. Written tabulations may be obtained by submitting a stamped self-addressed envelope with the bid.

C. Information pertaining to completed files may be secured by visiting the department during normal working hours.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1551-1736 and 48:204-210.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Office of Purchasing, LR 8:148 (March 1982), amended LR 29:615 (April 2003).

§379. Rejection of Bids

A. All written bids, unless otherwise provided for, must be submitted on, and in accordance with, forms provided. Bids submitted in the following manner will not be accepted:

1. bid contains no signature indicating an intent to be bound;
2. a typed name without either a printed or written signature will not be accepted;
3. bid completed in pencil;
4. bids received after the bid opening time;
5. bids not submitted on the Department of Transportation and Development's bid form indicating an intent not to be bound by the department's special instructions and conditions;
6. bids which contain special conditions and terms which differ from the department's special instructions and conditions.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1551-1736 and 48:204-210.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Office of Purchasing, LR 8:148 (March 1982), amended LR 29:615 (April 2003).

§381. Mistakes in Bids

A. Bids may be withdrawn, if such correction or withdrawal does not prejudice other bidders, and such actions may be taken only to the extent permitted under these regulations.

B. A request to withdraw a bid after the bid opening must be made within three business days after bid opening, and must be supported in writing.

C. Requests to withdraw a bid after three business days will be considered by the DOTD procurement director and the bidder may or may not be allowed to withdraw the bid based on the best interest of the Department of Transportation and Development.

D. Minor informalities are matters of form rather than substance which are evident from the bid document, or

insignificant mistakes that can be waived or corrected without prejudice to other bidders. The DOTD procurement director may waive such informalities or allow the bidder to correct them depending on which is in the best interest of the state. Examples include, but are not limited to:

1. failure to return the number of signed bids required by the invitation for bids;
2. failure to sign the bid, but only if the unsigned bid is accompanied by other signed material indicating the bidder's intent to be bound;
3. failure to sign or initial a write-over or correction in bid;
4. failure to get certification that a mandatory job-site visit was made;
5. failure to return non-mandatory pages of the bid proposal.

E. If the mistake and the intended bid are clearly evident on the face of the bid document, the bid shall be corrected to the intended bid and may not be withdrawn.

F. Some examples of mistakes that may be clearly evident on the face of the bid document are:

1. typographical errors;
2. errors in extending unit prices;
3. failure to return an addendum provided there is evidence that the addendum was received.

G. When an error is made in extending total prices, the unit bid price will govern.

H. Under no circumstances will a unit bid price be altered or corrected unless the bid price is clearly marked stating the unit of measure used. However, if the invitation for bids states that bids submitted in a different unit of measure will not be considered for award, the bid will be rejected.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1551-1736 and 48:204-210.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Office of Purchasing, LR 8:148 (March 1982), amended LR 29:615 (April 2003).

§383. Increase or Decrease in Quantities

A. Bidders must quote in the quantity shown on the invitation for bids.

B. Bidders increasing or decreasing quantity due to packaging will not be considered for award.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1551-1736 and 48:204-210.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Office of Purchasing, LR 8:148 (March 1982), amended LR 29:615 (April 2003).

§385. Alternate Bids

A. Any bidder quoting an alternate product which does not fully comply with the specifications contained in the

invitation for bids must state in what respect the product deviates.

B. Failure to note exceptions on the bid form will be considered an indication that the product meets the specifications contained in the invitation for bids.

C. Bidders quoting an equivalent brand or model should submit with the bid information such as illustrations, descriptive literature and /or technical data sufficient for the Department of Transportation and Development to evaluate quality, suitability and compliance with the specifications.

D. Failure to submit descriptive information may cause bid to be rejected.

E. Any change made to a manufacturer's published specification submitted for a product should include verification by the manufacturer.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1551-1736 and 48:204-210.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Office of Purchasing, LR 8:148 (March 1982), amended LR 29:616 (April 2003).

§387. "All or None" Bids Covering Non-Exempt Commodities

A. Bidders may limit a bid on acceptance of the whole bid, whereupon the department shall not thereafter reject part of such bid and award on the remainder.

B. An award shall be made to the "all or none" bid only if it is the overall low bid on all items, or on those items bid.

C. The overall low bid shall be that bid whose total bid, including all items bid, is the lowest dollar amount; be it an individual bid or a computation of all low bids on individual items of those bids that are not conditioned "all or none."

D. When multiple items are contained on any solicitation and the department chooses to make a group award in order to save the department the cost of issuing another purchase order, an award may be made to a vendor already receiving a purchase order if the total bid for said item is \$1,000 or less, and the total difference between the low bidder and the bidder receiving the award is \$100 or less.

E. Bidders quoting "all or none" will not be considered for award if the invitation for bids specifically states that "all or none" bids will not be considered for award. The only exception to this is if the bidder is the low bidder on all items.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1551-1736 and 48:204-210.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Office of Purchasing, LR 8:148 (March 1982), amended LR 29:616 (April 2003).

§389. "All or None" Bids Covering Exempt Commodities

A. Bidders may limit a bid on acceptance of the whole bid, whereupon the department shall not thereafter reject part of such bid and award on the remainder.

B. When multiple items are contained on any solicitation and the department chooses to make a group award in order to save the department the cost of issuing another purchase order, an award may be made to a vendor already receiving a purchase order if the total bid for said item is \$1,000 or less, and the total difference between the low bidder and the bidder receiving the award is \$100 or less.

C. The decision to award on the basis of all of none or on individual items will be determined by the DOTD procurement director taking into consideration the best interest of the Department of Transportation and Development.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1551-1736 and 48:204-210.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Office of Purchasing, LR 8:148 (March 1982), amended LR 29:616 (April 2003).

§391. Preferences

A. Preference in awarding contracts will be given for all types of products produced, manufactured, assembled, grown, or harvested in Louisiana in accordance with the Louisiana Procurement Code.

B. Preferences will not be considered in the award of service contracts.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1551-1736 and 48:204-210.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Office of Purchasing, LR 8:148 (March 1982), amended LR 29:616 (April 2003).

§393. Bid Prices

A. All bid prices shall remain firm for the contractual period.

B. Unit prices must not exceed four digits to the right of the decimal point. Unit prices submitted beyond four digits will be rounded off to the nearest fourth digit.

C. All bid prices quoted shall include all costs incidental to any license or patent that may be held by any company. The bidder agrees to hold the Department of Transportation and Development harmless from any claims, suits, costs or penalties for infringement or use of licensed or patented products.

D. Bid prices, unless otherwise specified, must be net including transportation and handling charges fully prepaid to destination. Bids containing C.O.D. requirements will not be considered for award.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1551-1736 and 48:204-210.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Office of Purchasing, LR 8:148 (March 1982), amended LR 29:616 (April 2003).

§395. Bids Binding

A. Unless otherwise specified, all invitations for bid shall be binding for a minimum of 30 calendar days. Nevertheless, if the lowest responsive and responsible bidder is willing to keep his price firm in excess of 30 days, the department may

award to this bidder after this period has expired, or after the period specified in the bid has expired.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1551-1736 and 48:204-210.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Office of Purchasing, LR 8:148 (March 1982), amended LR 29:616 (April 2003).

§397. Taxes

A. Pursuant to Act 1029 of the 1991 Regular Session of the Louisiana Legislature, the state and any of its agencies, boards or commissions are exempt from the Louisiana State Sales and Use Taxes.

B. Vendors are responsible for including any other applicable taxes in the bid price.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1551-1736 and 48:204-210.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Office of Purchasing, LR 8:148 (March 1982), amended LR 29:616 (April 2003).

§399. Rejection of Bids

A. The Department of Transportation and Development reserves the right to reject any or all bids in whole or in part, waive any informalities, and to award by items, parts of items, or by any group of items specified and/or waive any informalities.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1551-1736 and 48:204-210.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Office of Purchasing, LR 8:148 (March 1982), amended LR 29:617 (April 2003).

§401. Bid Evaluation and Award

A. Contracts are awarded to the lowest responsible and responsive bidder whose bid meets the requirements and criteria set forth in the invitation for bids.

B. No bid shall be evaluated for any requirements or criteria that are not disclosed in the invitation for bids.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1551-1736 and 48:204-210.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Office of Purchasing, LR 8:148 (March 1982), amended LR 29:617 (April 2003).

§403. Determination of Lowest Bidder

A. Following determination of product acceptability, bids will be evaluated to determine which bidder offers the lowest cost to the Department of Transportation and Development in accordance with the evaluation criteria set forth in the invitation for bids.

B. Only objectively measurable criteria which are set forth in the invitation for bids shall be applied in determining the lowest bidder. Evaluation factors shall treat all bids equitably.

C. A contract shall not be awarded to a bidder submitting a higher quality item than that required by the invitation for

bids unless the bid is also the lowest bid meeting specifications. There shall be no negotiation with any bidder.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1551-1736 and 48:204-210.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Office of Purchasing, LR 8:148 (March 1982), amended LR 29:617 (April 2003).

§405. Tie Bids

A. Tie bids are defined as low responsive bids from responsible bidders that are identical in price and which meet all requirements and criteria set forth in the invitation for bids.

B. Resident businesses shall receive preference over nonresident businesses where there is a tie bid and where there will be no sacrifice or loss of quality.

C. A written determination justifying the manner of award must be made a part of the file. This would include, but is not limited to consideration of such factors as:

1. resident business;
2. proximity;
3. past performance;
4. delivery;
5. completeness of bid proposal.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1551-1736 and 48:204-210.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Office of Purchasing, LR 8:148 (March 1982), amended LR 29:617 (April 2003).

§407. Discounts

A. Discounts will be considered in determining low bidder on one-time purchases or definite quantity purchases if the discount is at least 1 percent for a minimum of 30 days.

B. In the event the discount is for less than 1 percent or less than 30 days, the discount will be taken but will not be a determining factor in the bid evaluation.

C. Discounts will not be considered in determining low bidder on term contracts or indefinite quantity purchases.

D. Discounts will be taken but will not be a determining factor in the bid evaluation.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1551-1736 and 48:204-210.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Office of Purchasing, LR 8:148 (March 1982), amended LR 29:617 (April 2003).

§409. Standards of Responsibility

A. A responsible bidder is a company or person who has the capability in all respects to perform fully the contract requirements, and which has the integrity and reliability which will assure good faith performance.

B. Capability, as used in this rule, means capability at the time of award of the contract, unless otherwise specified in the invitation for bids.

C. Factors to be considered in determining whether the standard of responsibility has been met include, but are not limited to, whether a prospective contractor has the appropriate financial, material, equipment, facility, and personnel resources and expertise, or the ability to obtain them, necessary to indicate capability of meeting all contractual requirements.

D. The prospective contractor shall supply information requested concerning the responsibility of such contractor.

E. If such contractor fails to supply the requested information, the DOTD procurement director shall base the determination of responsibility upon any available information or may find the prospective contractor non-responsive.

F. Before awarding a contract, the procurement officer must be satisfied that the prospective contractor is responsible.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1551-1736 and 48:204-210.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Office of Purchasing, LR 8:148 (March 1982), amended LR 29:617 (April 2003).

§411. Signatory Authority

A. By signing a bid form, the bidder certifies that the bid is made without collusion or fraud.

B. In accordance with R.S.39:1594, the person signing the bid must be:

1. a current corporate officer, partnership member or other individual specifically authorized to submit a bid as reflected in the appropriate records on file with the Secretary of State; or

2. an individual authorized to bind the vendor as reflected by an accompanying corporation resolution, certificate or affidavit; or

3. an individual listed on the State of Louisiana Bidder's Application as authorized to execute bids.

C. Evidence of authority to submit the bid shall be required in accordance with R.S. 39:1594(C)(4).

D. By signing the bid, the bidder certifies compliance with the provisions listed above.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1551-1736 and 48:204-210.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Office of Purchasing, LR 8:148 (March 1982), amended LR 29:617 (April 2003).

§413. Documentation of Award

A. Following award, all files shall contain documentation including, but not limited to, the following:

1. a list of all solicited bidders;

2. a list of all bids received;

3. the bid tabulation; and

4. the basis of award.

B. In the event that the low bidder was by-passed and the award was made to a higher bidder, the file shall contain documentation that states the reason for the rejection of the lower bid.

C. If no bid was solicited from a certified economically disadvantaged business, the file shall contain an explanation of why such a bid was not solicited.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1551-1736 and 48:204-210.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Office of Purchasing, LR 8:148 (March 1982), amended LR 29:618 (April 2003).

§415. Insurance Requirements

A. Any contractor performing any service on any premises of the Department of Transportation and Development must furnish proof of:

1. public liability insurance;

2. property damage insurance;

3. workmen's compensation insurance; and

4. automobile public liability insurance, if applicable before work can commence.

B. The certificates of insurance, issued by a company licensed to do business in the state of Louisiana, must be furnished within 10 days after notification of award.

C. The contractor shall not suspend, void, cancel or reduce the coverage or limits of any of the required insurance while the contract is in effect. In the event of any such occurrence, the DOTD procurement director must be immediately notified and acceptable alternate coverage must be furnished.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1551-1736 and 48:204-210.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Office of Purchasing, LR 8:148 (March 1982), amended LR 29:618 (April 2003).

§417. Workman's Compensation Insurance

A. If applicable, contractors and subcontractors shall secure and maintain workman's compensation insurance for all of their employees employed at the site of a project.

B. In case any class of employees is engaged in hazardous work as defined by the Workman's Compensation Statute, the contractor and subcontractor shall provide employer's liability insurance for the protection of their employees not otherwise protected.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1551-1736 and 48:204-210.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Office of Purchasing, LR 8:148 (March 1982), amended LR 29:618 (April 2003).

§419. Public Liability and Property Damage Insurance

A. If applicable, contractors and subcontractors shall secure and maintain comprehensive public general liability insurance, including but not limited to:

1. bodily injury;
2. property damage;
3. contractual liability;
4. products liability; and

5. owner's protective liability, with combined single limits of \$500,000 per occurrence with a minimum aggregate of \$1,000,000.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1551-1736 and 48:204-210.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Office of Purchasing, LR 8:148 (March 1982), amended LR 29:618 (April 2003).

§421. Automobile Public Liability Insurance

A. If applicable, contractors and subcontractors shall take and maintain automobile public liability insurance in an amount not less than combined single limits of \$500,000 per occurrence for bodily injury and/or property damage.

B. If any non-licensed motor vehicles are engaged in operations at a Department of Transportation and Development jobsite, such insurance shall cover the use of all such motor vehicles engaged in operating within the terms of the contract.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1551-1736 and 48:204-210.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Office of Purchasing, LR 8:148 (March 1982), amended LR 29:618 (April 2003).

§423. Performance Bond

A. When specified in the invitation for bids, a performance bond made payable to the Department of Transportation and Development must be submitted prior to award.

B. Failure to submit a performance bond within the time allowed will result in disqualification or non-consideration of the bid.

C. Performance bonds shall be written by a surety or insurance company currently on the U.S. Department of the Treasury Financial Management Service list of approved bonding companies which is published annually in the Federal Register, or by a Louisiana domiciled insurance company with at least an "A-" rating in the latest printing of the A.M. Best's Key Rating Guide to write individual bonds up to 10 percent of policyholders' surplus as shown in the A.M. Best's Key Rating Guide.

D. No surety or insurance company shall write a performance bond which is in excess of the amount indicated as approved by the U.S. Department of the Treasury Financial Management Service list or by a Louisiana domiciled insurance company with an "A-" rating

by A.M. Best up to a limit of 10 percent of policyholders' surplus as shown by A.M. Best; companies authorized by this Paragraph who are not on the Treasury List shall not write a performance bond when the penalty exceeds 15 percent of its capital and surplus, such capital and surplus being the amount by which the company's assets exceed its liabilities as reflected by the most recent financial statements filed by the company with the Louisiana Department of Insurance.

E. The requirement of a performance bond cannot be waived. The conditions of the performance bond shall provide that failure to meet delivery requirements and specifications shall constitute a forfeiture of said bond to the extent of loss suffered by the department or shall constitute a forfeiture of said bond to the extent required to enable the Department of Transportation and Development to meet the requirements of the contract hereof.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1551-1736 and 48:204-210.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Office of Purchasing, LR 8:148 (March 1982), amended LR 29:618 (April 2003).

§425. Deliveries

A. Any extension of time on delivery or project completion time must be requested in writing by the vendor and accepted or rejected in writing by the DOTD procurement director.

B. Such extension is applicable only to the particular item or shipment affected.

C. No delivery charges shall be added to invoices except when express delivery is requested by the DOTD procurement director and is substituted on an order for less expensive methods specified in the contract. In such cases, when requested by the DOTD procurement director, the difference between freight or mail and express charges may be added to the invoice.

D. The Department of Transportation and Development reserves the right to weigh shipments if deemed appropriate.

E. Deliveries shall be subject to reweighing on official scales designated by the department.

F. Payments shall be made on the basis of net weight of materials delivered.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1551-1736 and 48:204-210.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Office of Purchasing, LR 8:148 (March 1982), amended LR 29:619 (April 2003).

§427. Invoices

A. Upon each delivery and its acceptance by the department, the contractor shall bill the department by means of an invoice and such invoice shall make reference to the purchase order number on which delivery was made.

B. At the time of delivery, the contractor is to make a delivery ticket on his own form showing:

1. complete description;
2. the exact quantity delivered;
3. price;
4. extension; and
5. purchase order number.

C. Invoices shall be submitted by the contractor in triplicate directly to the address shown on the purchase order.

D. Invoice price must agree with contract price.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1551-1736 and 48:204-210.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Office of Purchasing, LR 8:148 (March 1982), amended LR 29:619 (April 2003).

§429. Payment

A. After receipt and acceptance of order and receipt of valid invoice, payment will be made by the Department of Transportation and Development within the discount period or within 30 calendar days from receipt of correct invoice.

B. If contractor proposes a discount, the discount period will start from receipt of correct invoice.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1551-1736 and 48:204-210.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Office of Purchasing, LR 8:148 (March 1982), amended LR 29:619 (April 2003).

§431. Default of Contractor

A. Failure to deliver within the time specified in the invitation for bids will constitute a default and may cause cancellation of the contract.

B. If the contractor is considered to be in default, the Department of Transportation and Development reserves the right to purchase any or all products or services covered by the contract on the open market and to charge the contractor with costs in excess of the contract price.

C. Until such assessed charges have been paid, no subsequent bid from the defaulting contractor will be considered.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1551-1736 and 48:204-210.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Office of Purchasing, LR 8:148 (March 1982), amended LR 29:619 (April 2003).

§433. Assignments

A. No contract or purchase order or proceeds thereof may be assigned, sublet or transferred without a written request from the contractor.

B. Contractors are required to submit an "assignment of proceeds of contract" document and an "assignment of contract" document to the DOTD procurement director.

C. If the contract covers an exempt commodity, the assignment must be approved by the DOTD procurement director.

D. If the contract covers a non-exempt commodity, the assignment must be approved by the director of state purchasing and the commissioner of administration.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1551-1736 and 48:204-210.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Office of Purchasing, LR 8:148 (March 1982), amended LR 29:619 (April 2003).

§435. Reduction in Contract Price

A. The Department of Transportation and Development cannot accept a reduction in price on any non-exempt commodity contract unless the price reduction is offered to all state agencies using the contract.

B. The Department of Transportation and Development reserves the right to accept a reduction in price on any exempt commodity contract if it is considered in the best interest of the department.

C. Inspection of Facilities Contracts entered into by the Department of Transportation and Development may provide that the state may inspect supplies and services at the contractor's or subcontractor's facility and perform tests to determine whether they conform to solicitation requirements, or after award, to contract requirements, and are therefore acceptable.

D. Such inspections and tests shall be conducted in accordance with the terms of the solicitation and contract and shall be performed so as not to unduly delay the work of the contractor or subcontractor.

E. No inspector may change any provision of the specifications or the contract without written authorization of the DOTD procurement director. The presence or absence of an inspector shall not relieve the contractor or subcontractor from any requirements of the contract.

F. When an inspection is made in the plant or place of business of a contractor or subcontractor, such contractor or subcontractor shall provide without charge all reasonable facilities and assistance for the safety and convenience of the person performing the inspection or testing.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1551-1736 and 48:204-210.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Office of Purchasing, LR 8:148 (March 1982), amended LR 29:619 (April 2003).

§437. Audit of Records

A. The state may enter a contractor's or subcontractor's plant or place of business to:

1. audit cost or pricing data; or
2. audit the books and records of any contractor or subcontractor;
3. investigate in connection with an action to debar; or

4. suspend a person from consideration for award of contracts.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1551-1736 and 48:204-210.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Office of Purchasing, LR 8:148 (March 1982), amended LR 29:620 (April 2003).

§439. Contract Renewal

A. When a contract contains an option for renewal clause, notice of such provision shall be included in the solicitation.

B. When such a contract is awarded by competitive sealed bidding, exercise of the option shall be at the department's discretion only, and shall be with the mutual agreement of the Department of Transportation and Development and the contractor.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1551-1736 and 48:204-210.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Office of Purchasing, LR 8:148 (March 1982), amended LR 29:620 (April 2003).

§441. Exercise of Renewal Option

A. Before exercising any option for renewal, the DOTD procurement director or designee shall attempt to ascertain whether a re-solicitation is practical.

B. Factors to be considered include but are not limited to:

1. current market conditions;
2. trends;
3. cost factors;
4. price comparisons with similar service in other states; and
5. various other factors as determined by the DOTD procurement director.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1551-1736 and 48:204-210.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Office of Purchasing, LR 8:148 (March 1982), amended LR 29:620 (April 2003).

§443. Termination of Contract

A. The Department of Transportation and Development reserves the right to terminate any contract prior to the end of the contract period upon providing a 10 day written notice to the contractor for:

1. failure to deliver within the time specified in the contract;
2. failure of the product or service to meet specifications;
3. failure to conform to sample quality;
4. failure to be delivered in good condition;
5. unsatisfactory performance;

6. unsatisfactory delivery;

7. unsatisfactory service;

8. misrepresentation by the contractor;

9. fraud;

10. collusion;

11. conspiracy or other unlawful means of obtaining contract;

12. conflict of contract provisions with constitutional or statutory provisions of state or federal law;

13. breach of contract; or

14. if termination is in the best interest of the department.

B. Should the contractor find that due to increase in price or lack of product availability an order cannot be filled, the contractor must submit a request for cancellation to the DOTD procurement director.

C. The DOTD procurement director will make a determination as to whether the contract will be cancelled based upon the reasons cited in the request.

D. All orders delivered prior to the effective date of such termination shall be paid for by the department in accordance with the terms of the contract, whereupon all obligations of both parties to the contract shall cease.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1551-1736 and 48:204-210.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Office of Purchasing, LR 8:148 (March 1982), amended LR 29:620 (April 2003).

§445. Debarment

A. This Section applies to a debarment or suspension for cause from consideration for award of contracts where there is probable cause for such action.

B. After reasonable notice to the party involved, the appropriate chief procurement officer shall have authority to suspend or debar a party for cause.

C. The DOTD procurement director serves as the hearing officer for exempt commodities, and the director of state purchasing serves as the hearing officer for non-exempt commodities.

D. Should the party involved desire a formal hearing, he shall, within five days of receipt of the notice referred to Subsection B, inform the chief procurement officer in writing of said desire.

E. Formal hearings will be conducted pursuant to the provisions of Title 49, Chapter 13 of the Louisiana Revised Statutes.

F. Within 14 days after the date of mailing of the notice referred to in Subsection B, the chief procurement officer will issue a written decision stating the reasons for the action taken and informing the party, aggrieved person or interested

person of the right to administrative review and thereafter judicial review, where applicable.

G. A copy of the decision or order shall be mailed or otherwise furnished to all interested parties.

H. Appeals from a suspension or debarment decision must be filed with the commissioner of administration within 14 days of the receipt of the decision.

I. The commissioner shall decide within 14 days whether, or the extent to which, the debarment or suspension was in accordance with the constitution, statutes, regulations, and the best interest of the state, and was fair.

J. The decision of the commissioner of administration on the appeal shall be final and conclusive unless:

1. the decision is fraudulent; or
2. the debarred or suspended party has timely appealed to the court in accordance with R.S. 39:1691(B).

K. The filing of the petition in the Nineteenth Judicial District Court shall not stay the decision of the commissioner of administration.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1551-1736 and 48:204-210.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Office of Purchasing, LR 8:148 (March 1982), amended LR 29:620 (April 2003).

§447. Protest of Bid Solicitation or Award

A. In accordance with R.S. 39:1671, any person who is aggrieved in connection with the solicitation, award, or issuance of written notice of intent to award may protest to the chief procurement officer.

B. The chief procurement officer for exempt commodities is the DOTD procurement director and the chief procurement officer for non-exempt commodities is the director of state purchasing.

C. Protests with respect to a solicitation shall be submitted in writing at least two days prior to the opening of bids.

D. In the event of protest, the chief procurement officer will suspend the bid opening until a decision on the protest has been determined.

E. Protests with respect to the award of a contract or the issuance of written notice of intent to award a contract shall be submitted in writing within 14 days after contract award.

F. In the event of protest, the chief procurement officer will issue a stay until a decision on the protest has been determined.

G. Within 14 days of receipt of protest, the chief procurement officer shall issue a written decision stating the reasons for the action taken and informing the party, aggrieved person, or interested person of the right to administrative review and thereafter judicial review where applicable.

H. An aggrieved person or an interested person must appeal to the commissioner of administration within seven days of receipt of the decision of the chief procurement officer.

I. The commissioner of administration shall decide within 14 days whether the solicitation or award or intent to award was in accordance with the constitution, statutes, regulations and the terms and conditions of the solicitation.

J. The decision of the commissioner of administration on the appeal shall be final and conclusive unless:

1. the decision is fraudulent; or
2. the person adversely affected by the decision of the commissioner of administration has timely appealed to the court in accordance with R.S. 39:1691.

K. The Nineteenth Judicial District Court shall have exclusive venue over an action between the state and a bidder or contractor, prospective or actual, to determine whether a solicitation or award of a contract is in accordance with the constitution, statutes, regulations, and the terms and conditions of the solicitation.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:1551-1736 and 48:204-210.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Office of Purchasing, LR 8:148 (March 1982), amended LR 29:621 (April 2003).

